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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,128	12/04/2003	Robert B. Nilsen	043927-004054USPT	7639
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NIXON PEABODY LLP - PATENT GROUP			EXAMINER	
1100 CLINTON SQUARE			SEFER, AHMED N	
ROCHESTER, NY 14604			ART UNIT	PAPER NUMBER
			2893	
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			01/04/2011	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/728,128	<b>Applicant(s)</b> NILSEN ET AL.
	<b>Examiner</b> AHMED SEFER	<b>Art Unit</b> 2893

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 October 2010.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,10-13,27 and 34-37 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 10 and 35 is/are allowed.  
 6) Claim(s) 1,11-13,27,34,36 and 37 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### Response to Amendment

1. The amendment filed on October 25, 2010 has been entered.

Claims 1 and 10 have been amended.

Claims 1, 10-13 and 34-37 are pending.

2. The declaration under 37 CFR 1.132 filed on 10/25/2010 is insufficient to overcome the rejection of claims 1, 11-13, 27, 34, 36 and 37 based upon 35 U.S.C. § 102 as set forth in the last Office action because: It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

### Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.  
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 11 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ono (“Ono”) USPN 4,842,824

Ono discloses in figs. 1A-1C an optical polarizer film comprising a substrate 10 having a subwavelength moth-eye structure (cols. 2, lines 60-66 and the paragraph bridging cols. 2 and 3)

including peaks and valleys and a light-transmissive inhibiting surface 11 covering at least a portion of the substrate providing polarization.

Re claim 11, Ono discloses the light-transmissive inhibiting surface covering at least some of the peaks.

Re claim 34, Ono discloses the light-transmissive inhibiting surface being conductive.

5. Claims 13 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Ono.

Ono discloses in figs. 1A-1C a polarizer comprising at least one subwavelength microstructure including an undulating surface (cols. 2, lines 60-66 and the paragraph bridging cols. 2 and 3) that includes a light-transmissive inhibiting surface 11 in at least some raised areas of the microstructure.

Re claim 36, Ono discloses the light-transmissive inhibiting surface being conductive.

6. Claims 1, 11 and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Booth et al ("Booth") USPN 6,175,442.

Booth discloses in figs. 2 and 3 an optical polarizer film comprising a substrate 18 having a subwavelength moth-eye structure 22 including peaks and valleys and a light-transmissive inhibiting surface 20/24 covering at least a portion of the substrate providing polarization.

Re claim 11, Booth discloses the light-transmissive inhibiting surface covering at least some of the peaks.

Re claim 34, Booth discloses the light-transmissive inhibiting surface being conductive (col. 3, lines 23-28).

7. Claims 13 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Booth.

Booth discloses in figs. 2 and 3 a polarizer comprising at least one subwavelength microstructure including an undulating surface 22 that includes a light-transmissive inhibiting surface 24 in at least some raised areas of the microstructure.

Re claim 36, Ono discloses the light-transmissive inhibiting surface being conductive (col. 3, lines 23-28).

#### **Claim Rejections - 35 USC § 103**

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12, 27 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Booth in view of Perlo et al. ("Perlo") USPN 5,817,396.

Booth discloses the device structure as recited in the claims, but does not specifically disclose a transparent coating.

Perlo discloses a polarizer comprising a structure or at least one microstructure including peaks and valleys or an undulating surface; and a substantially transparent coating 16 disposed on the polarizer film (col. 5, lines 34-40).

Therefore, in view of Perlo's teachings, one having an ordinary skill in the art at the time the invention was made would be motivated to modify Ono by incorporating a transparent coating. The motivation would have been to improve absorption as taught by Perlo.

**Allowable Subject Matter**

10. Claims 10 and 35 are allowed.
11. The following is a statement of reasons for the indication of allowable subject matter:  
None of the cited references disclose an intermittent surface covering at least a portion of a substrate and a conductive coating disposed on the intermittent surface in at least some of valleys as recited in independent claim 10.

**Response to Arguments**

12. Applicant's arguments filed 10/25/10 have been fully considered. Applicants make the following arguments:

Applicants disagree and submit that the metal layer 11 of Ono does not provide polarization of light striking this structure (page 4, lines 15 and 16). This is not persuasive because it is reasonable to assume that recited function of a polarization is provided, because a comparison of Applicant's specification to Ono's disclosure reveals that Ono discloses, similar to Applicant's, a light transmissive inhibiting surface 11 covering at least a portion of the substrate. As to the assertion that there would be no apparent benefit to using an optical polarizing film in the invention of Ono, since the laser light used therein is already polarized, it fails to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patently distinguishes them from the reference(s).

Applicants disagree and submit that the metal layer 11 of Ono cannot be substantially transparent at the time when it absorbs laser light (page 5, lines 1 and 2). The Examiner agrees

that the recitation calling for, "... a substantially transparent coating ..." as recited in claims 12, 27 and 37 is not met by Ono.

Applicants submit that the light-transmissive inhibiting surface 20/24 of Booth does not provide polarization and that layer 20 and elements 24 are not arranged in a manner which would provide the function of a polarizer (page 6, lines 8-13). This is not persuasive because it is reasonable to assume that recited function of a polarization is provided, because a comparison of Applicant's specification to Booth's disclosure reveals that Booth discloses, similar to Applicant's, a light transmissive inhibiting surface 20/24 covering at least a portion of the substrate.

Applicants submit that the coating of Perlo is not substantially transparent. Therefore, the proposed prior art combination fails to provide the invention of claims 12, 27, and 37. This is not persuasive because Perlo teaches (col. 5, lines 34-40) that a polymeric material (polymers tend to be transparent) is employed as element 16.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. Sefer whose telephone number is (571)272-1921.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Davienne Monbleau can be reached on (571) 272-1945.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/A. Sefer/  
Primary Examiner  
Art Unit 2893*

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